

FORTINO, PLAXTON & COSTANZO, P.C.

ATTORNEYS AT LAW

214 EAST SUPERIOR STREET

ALMA, MICHIGAN 48801

TELEPHONE (989) 463-2101

FAX (989) 463-2104

ALFRED J. FORTINO
(1914-2007)

JOHN J. MOSKAL
(1932-1997)

CHARLES M. FORTINO
ANTHONY G. COSTANZO

OF COUNSEL:
KENNETH D. PLAXTON

RECEIVED AUG 12 2010

August 10, 2010

Village of Ashley
Attn: Steve Moffit
P.O. Box 158
Ashley, Michigan 48806

Re: Municipal Civil Infraction Ordinance

Dear Steve,

Enclosed is a rough draft of a Municipal Civil Infraction Ordinance, for your review. Please note that I have simply guessed regarding the ordinances which might be covered by civil infractions, as you review the table of violations. This highlights the need to review all of the ordinances to determine whether it is necessary to decriminalize existing ordinances.

Once you have had an opportunity to review this draft, please call so that we can discuss it.

Sincerely,

FORTINO, PLAXTON & COSTANZO, P.C.


By: Charles M. Fortino

CMF: pjm

Enclosure

ORDINANCE NUMBER _____
AN ORDINANCE TO PROVIDE FOR THE ENFORCEMENT OF MUNICIPAL
CIVIL INFRACTIONS AND TO ESTABLISH A MUNICIPAL CIVIL
INFRACTION BUREAU

WHEREAS, violation of several of the Village of Ashley Ordinances constitutes a civil infraction, and

WHEREAS, statute permits the Village to establish such violations as municipal civil infractions, and

WHEREAS s, statute permits the establishment of a municipal civil infractions bureau within the Village, and

WHEREAS, the establishment of a municipal civil infractions bureau will facilitate and streamline the enforcement of the Village's ordinances,

NOW THEREFORE, the Village of Ashley ordains:

Sec. 1. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act means Public Act No. 236 of 1961 (MCL 600.101 et seq., as amended).

Authorized village official means a code enforcement official, a village manager, the village president, or anyone designated by the village council or other personnel of the village authorized by this Code or any ordinance to issue municipal civil infraction citations or municipal civil infractions violation notices. Any building inspector and/or his designee shall also be considered to be an authorized village official with respect to violations of Ordinance number _____ (building code violations???)

Bureau means the village municipal ordinance violations bureau as established by this article.

Municipal civil infraction citation means a written complaint or notice prepared by an authorized village official directing a person to appear in court regarding the occurrence or existence of a municipal infraction violation by the person cited.

Municipal civil infraction violation notice means a written notice prepared by an authorized village official, directing a person to appear at the village municipal ordinance violations bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the village, as authorized under sections 8396 and 8707(6) of the act (MCL 600.8396, 600.8707(6)).

Sec. 2. Municipal civil infraction action; commencement.

A municipal civil infraction action may be commenced upon the issuance by an authorized village official of a municipal civil infraction citation directing the alleged violator to appear in court or a municipal civil infraction violation notice directing the alleged violator to appear at the village municipal ordinance violations bureau.

Sec. 3. Municipal civil infraction citations; issuance and service.

Municipal civil infraction citation shall be issued and served by authorized village officials as follows:

(a) The time for appearance specified in a citation shall be within a reasonable time after the citation is issued.

(b) The place for appearance specified in the citation shall be the district court.

(c) Each citation shall be numbered consecutively and shall be in a form approved by the state court administrator. The original citation shall be filed with the district court. Copies of the citation shall be retained by the village and issued to the alleged violator as provided by section 8705 of the act (MCL 600.8705).

(d) A citation for a municipal civil infraction signed by an authorized village official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge and belief."

(e) An authorized village official who witnesses a person commit a civil infraction shall prepare and subscribe as soon as possible and as completely as possible, an original and required copies of a citation.

(f) An authorized village official may issue a citation to a person if:

1. Based on investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction; or
2. Based upon investigation of a complaint by someone who allegedly witnessed the person commit a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for an infraction and if the prosecuting attorney or village attorney approves in writing the issuance of the citation.

(g) Municipal civil infraction citations shall be served by an authorized village official as follows:

1. Except as provided by subsection (7)b. below, an authorized village official shall personally serve a copy of a citation upon the alleged violator.
2. If an municipal civil infraction action involves the use or occupancy of land, a building, or other structure, a copy of the citation does not need to be personally served upon the alleged violator, but may be served upon an owner or occupant of the land, building or structure by posting the copy on the land or attaching a copy to the building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building, or structure at the owner's last known address.

Sec. 4. Same--Contents.

- (a) A municipal civil infraction citation shall contain the name and address of the alleged violator, the municipal civil infraction alleged, the place where the alleged violator shall appear in court, the telephone number of the court, and the time at or by which the appearance shall be made.
- (b) Further, the citation shall inform the alleged violator that he or she may do one of the following:
 - (1) Admit responsibility for the municipal civil infraction by mail, in person, or by representation, at or by the time specified for appearance.
 - (2) Admit responsibility for the municipal civil infraction (with explanation) by mail by the time specified for appearance, or, in person, or by representation.
 - (3) Deny responsibility for the municipal civil infraction by doing either of the following:
 - a. Appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the village.
 - b. Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.
- (c) The citation shall also inform the alleged violator of all of the following:
 - (1) That if the alleged violator desires to admit responsibility "with explanation" in person or by representation, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for an appearance.
 - (2) That if the alleged violator desires to deny responsibility, the alleged violator must apply to the court in person, by mail, by telephone or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation.
 - (3) That a hearing shall be an informal hearing, unless a formal hearing is requested by the alleged violator or the village.
 - (4) That at an informal hearing, the alleged violator must appear in person before a judge or district court magistrate, without the opportunity of being represented by an attorney.
 - (5) That at a formal hearing, the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney.
- (d) The citation shall contain a notice in bold faced typed that the failure of the alleged violator to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in entry of a default judgment against the alleged violator on the municipal civil infraction.

Sec. 5. Municipal ordinance violations bureau.

- (a) *Bureau established.* The village hereby establishes a municipal ordinance violations bureau. The bureau is authorized under section 8396 of the act(MCL 600.8396) to accept admissions of responsibility for municipal civil infractions in response to municipal civil

infraction violation notices issued and served by authorized village officials, and to collect and retain civil fines and costs as prescribed by this Code or any ordinance.

(b) *Location; supervision; employees; rules and regulations.* The bureau shall be located at the village offices and shall be under the supervision and control of the village treasurer. The village treasurer, subject to the approval of the village council, shall adopt rules and regulations for the operation of the bureau and appoint any necessary qualified village employees to administer the bureau.

(c) *Disposition of violations.* The bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice (as distinguished from) has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the bureau. Nothing in this chapter shall prevent or restrict the village from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. Likewise, no person shall be required to dispose of a municipal civil infraction violation at the bureau, as they may have the violation proceed before a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the bureau shall not prejudice the person or in any way diminish the person's rights, privileges, and protection accorded by law.

(d) *Bureau limited to accepting admissions of responsibility.* The scope of the bureau's authority shall be limited to accepting admissions of responsibility for municipal civil infractions and collecting and retaining civil fines and costs as a result of those admissions. The bureau shall not accept payment of a fine from any person who denies having committed the offense or who admits responsibility only with explanation, and in no event shall the bureau determine or attempt to determine the truth or falsity of any fact or matter relating to an alleged violation.

(e) *Municipal civil infraction violation notices.* Municipal civil infraction violation notices shall be issued and served by authorized village officials under the same circumstances and upon the same persons as provided for citations as provided in subsections 3(6) and (7). In addition to any other information required by this Code or other ordinance, the notice of violation shall indicate the time by which the alleged violator must appear at the bureau, the methods by which any appearance may be made, the address and telephone number of the bureau, the hours during which the bureau is open, the amount of the fine scheduled for the alleged violation, and the consequences for failure to appear and pay the required fine within the required time.

(f) *Appearance; payment of fines and costs.* An alleged violator receiving a municipal civil infraction violation notice shall appear at the bureau and pay the specified fines and costs at or by the time specified for appearance in the municipal civil infraction violation notice. An appearance may be made by mail, in person, or by representation.

(g) *Procedure where admission of responsibility not made or fine not paid.* If an authorized village official issues and serves a municipal ordinance violation notice, and if an admission of responsibility is not made and the civil fine and cost, if any, prescribed by the schedule of fines for the violation are not paid at the bureau, a municipal civil infraction citation may be filed with the district court and a copy of the citation may be served by first class mail upon the alleged violator at the alleged violator's last known address. The citation filed with the court does not need to comply in all particulars with the requirement for citations as provided by section 8705 and 8709 of the act, but shall

consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the alleged violator how to respond to the citation.

Sec. 6. Schedule of civil fines established.

A schedule of civil fines payable to the bureau for admissions of responsibility by persons served with the municipal ordinance violation notice is hereby established. The fines for the violations listed below shall be as follows:

TABLE INSET:

Section of this Code violated	Offense	Fine
Ordinance # ????	Violation of International Property Maintenance Code	\$50.00
	First repeat offense	\$100.00
	Second or subsequent repeat offense	\$250.00
	Licensing of the operation of rental dwelling, multiple dwellings, and rooming houses	\$50.00
	First repeat offense	\$100.00
	Second or subsequent repeat offense	\$250.00
	Prohibited noises	\$50.00
	First repeat offense	\$100.00
	Second or subsequent repeat offense	\$250.00
	Violation of International Fire Code	\$50.00
	First repeat offense	\$100.00
	Second or subsequent repeat offense	\$250.00
	Accumulation or storage of partially dismantled or inoperative motor vehicles	\$50.00
	First repeat offense	\$100.00

	Second or subsequent repeat offense	\$250.00
	Blight/Vegetation violation	\$50.00
	First repeat offense	\$100.00
	Second or subsequent repeat offense	\$250.00
Other violations when penalty not specifically enumerated	First violation	\$50.00
	First repeat offense	\$100.00
	Second or subsequent repeat offense	\$250.00

7. **Separability.** If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

8. **Ordinances Repealed.** All ordinances and/or parts of ordinances inconsistent with this ordinance are hereby repealed.

9. **Effective Date.** This ordinance shall take effect and be in force fifteen days from and after its enactment as provided by the Village council.

Passed and approved by the Village Council of the Village of Ashley, Gratiot County, Michigan, in regular session, held _____, 2010.

We, the undersigned President and Clerk of the Village of Ashley, Michigan, do hereby certify that the above and foregoing Ordinance, known as Ordinance # _____ of the Village of Ashley, Michigan was adopted at a regular meeting of the Village Council, held on _____ and published in a newspaper circulated within the Village on _____, not less than fifteen days having elapsed between adoption and publication.

Dated at Ashley, Michigan, this _____ day of _____, 2010.

*

Its President

*

Its Clerk